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Public Corporations

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I. Legislation

At the 1965 session the general assembly enacted several pieces of legislation which broadened the ability of municipal corporations and special purpose districts to finance sewage facilities. In recent years the population growth in various sections throughout the state of South Carolina both within and without the city limits has brought about the need for the construction and extension of sewage collection, treatment and disposal facilities and the 1965 legislation enacted in this field should enable incorporated cities, towns and special purpose districts to better deal with this problem.

Two substantially identical acts were passed authorizing the imposition of front foot assessments to defray the cost of constructing sewage collection laterals. Act No. 349[1] authorizes incorporated municipalities, and Act No. 397[2] authorizes special purpose districts to do so. These acts also give the respective political entities involved other powers to enable them to better meet the needs for enlarged sewage facilities. Both acts face test suits in court as far as the authorization to impose front foot assessments is concerned. The use of the front foot assessment enables the public body involved to tailor the financing of needed sewage facilities by combining ad valorem taxes, sewer charges and front foot assessments in order to arrive at the most equitable financing plan under any given set of circumstances.

By Act No. 386[3] enacted at the 1965 session, municipalities and special purpose districts are authorized to enter into contracts providing for a joint enterprise in the construction of sewage collection, treatment and disposal facilities which will serve the residents of the area served by all of the contracting entities. The authorizations contained in this act are designed to reduce duplication of facilities whenever possible.

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1. S.C. Acts & J. Res. 1965, p. 614.
2. S.C. Acts & J. Res. 1965, p. 718.
3. S.C. Acts & J. Res. 1965, p. 693.

A. Municipalities Authorized to Impose Front Foot Assessments for Sewer Lines

Act No. 349 of 1965—Heretofore municipalities have defrayed the cost of constructing and extending sewage collection, treatment and disposal facilities from the proceeds derived from sewer or water charges and/or from an ad valorem tax levy. In some instances inequities can result. For instance, if a person buys a building lot within a municipality which is served by a sewage collection line installed by the developer, the property owner undoubtedly pays the cost of constructing this line in the purchase price of the property. If sewage collection laterals are installed in other sections of the municipality and the cost is defrayed from charges derived from the operation of the sewer or water system or from an ad valorem tax levy, then in either case the property owner, who had paid for his own sewer lateral lines in full, would also contribute towards the cost of constructing sewage collection laterals serving other properties within the municipality.

In the year 1898 the South Carolina Supreme Court ruled in the case of *Mauldin v. City Council of Greenville*,[4] that the general assembly could not empower a city to impose assessments against abutting property owners to defray the costs of paving sidewalks, in the absence of specific constitutional authorization. This holding was reaffirmed with regard to assessments for the installation of water lines in the case of *Stehmeyer v. City Council of Charleston*.[5] These decisions undoubtedly have contributed to the long delay in the enactment of legislation empowering municipalities to impose front foot assessments for the purpose of defraying the costs of constructing sewage laterals.

In 1962 in the case of *Distin v. Bolding*,[6] the South Carolina Supreme Court upheld the validity of assessments imposed to defray the costs of constructing sewage facilities. The assessments in the *Distin* case were actually service charges which would become liens upon the property served in the event they were not paid; and furthermore, *Distin* dealt with a public service district and not an incorporated city or town. Consequently, *Distin* is not conclusive as to the right of a municipality to impose front foot assessments to defray the costs of constructing sewer laterals. However, it was a sufficient indication that such

4. 53 S.C. 285, 31 S.E. 252 (1898).
5. 53 S.C. 259, 31 S.E. 322 (1898).
6. 240 S.C. 545, 126 S.E.2d 649 (1962).

legislation might be upheld that the general assembly at its 1965 session enacted Act No. 349[7] which, *inter alia*, establishes a procedure by which municipalities may impose front foot assessments against the property abutting sewer lines in order to defray all or a portion of the cost of installing such lines. The act further confirms the right of a municipality to place into effect, revise, enforce and collect sewage collection charges and to adopt regulations requiring all properties to which sewer service is available to connect to a municipal sewage collection facility. The act also expressly gives any municipality the power to contract with any public or private agency operating a water system within the municipality for the collection of such sewer charges, to regulate generally with respect to the discharge of sewage, etc., and to make unpaid sewer service charges a lien against the property served.

Briefly, in connection with the imposition of front foot assessments, the act provides that an ordinance providing for the same must first be enacted by the municipal council. Thereafter, upon the completion of the sewer laterals, the municipal council must then determine how much of the cost of constructing these laterals will be assessed against each property according to the extent of the respective frontage thereon, by an equal rate per foot of such frontage, and make out an assessment roll showing the amount assessed against each property.

A public meeting must then be provided for the hearing of any objections. Written notice of this meeting must be mailed to each property owner to be affected. Following the meeting the assessment roll, either in its original form or as modified, is confirmed by the municipal council. All objecting property owners must be given written notice of the assessment finally confirmed against his property and the right to appeal to the courts is preserved. A copy of the confirmed assessment is turned over to the treasurer of the municipality for collection in the same manner as municipal taxes; and past due assessments are to be collected by the sheriff or delinquent tax collector of the municipality. The act further provides for the payment of front foot assessments in installments, and prescribes that the funds derived from front foot assessments must be used to defray the costs, to the extent prescribed by the municipal council, of constructing sewage lateral connections or to provide debt service on bonds issued to defray such costs.

7. S.C. ACTS & J. RES. 1965, p. 614.

The provisions of the act with regard to notice to property owners would seem to comply with the requirements of due process set out in the *Distin* case. Consequently, the principal issue yet to be resolved by the court is whether or not the holdings in the *Mauldin* and *Stehmeyer* decisions apply to invalidate the act as far as the right to impose front foot assessments is concerned, or whether the subsequent holdings affirming the right of the general assembly to provide for the imposition of assessments, beginning with the case of *Evans v. Beattie*,[8] and continuing through *Distin*, sustain the right of the general assembly to empower a municipality to impose front foot assessments.

Sewer service charges are most efficiently collected on a water bill because if charges are not paid when due, water service can be discontinued until the sewer service charges are paid. However, in cases where a municipality owned sewer system serves property not served by (a) a municipal water system, or (b) a private water system which will enforce the collection of sewer charges, the only practical method of enforcing the payment of a sewer bill is by making the unpaid charge a lien against the property served as in *Distin*. The act here, following the procedure approved in the *Distin* decision, provides a method by which a municipality can make unpaid sewer charges liens against the property served.

B. Special Purpose Districts Authorized to Impose Front Foot Assessments for Sewer Lines

Act No. 397 of 1965—Act No. 397[9] empowers special purpose or public service districts exercising the power to construct and operate the sewage collection and disposal facilities (a) to place into effect, revise, enforce and collect a schedule of charges for its sewage collection, (b) to contract with any public or private agency operating a water system for the collection of such sewer charges, (c) to adopt and enforce regulations requiring all properties to which sewer service is available to connect to the district's sewage collection facilities as now existing or hereafter improved, (d) to make regulations generally with respect to the discharge of sewage and the use of privies, septic tanks and other types of sewage facilities, (e) to impose front foot assessments against properties abutting the sewage collection laterals, and

8. 137 S.C. 496, 135 S.E. 538 (1926).
9. S.C. ACTS & J. RES. 1965, p. 614.

(f) to make unpaid sewer service charges a lien against the property served.

Heretofore by special enactments particular special purpose districts have been given some of the powers set forth in this act. However, the act here is of general application and applies to any special purpose or public service district now existing or hereafter created by an act of the general assembly now or from time to time exercising the power to construct and operate sewer collection, disposal and treatment facilities. The act provides that the powers conferred thereby shall be exercised in the manner and to the extent set forth therein and that the provisions of this act shall supercede the analogous provisions of all special acts which may empower special purpose districts to exercise any of the powers conferred by this act.

This act empowers special purpose districts to enforce the collection of sewer charges in one of two ways. Special purpose districts are empowered to contract with any agency distributing water throughout the district constituting such agency as an agent of the district to collect sewer charges and providing, in the event of non-payment, the water collection agency will disconnect water service until the delinquent sewer service charges are paid. The other method provided is to make the unpaid sewer service charges a lien against the property served. In the event the unpaid sewer service charge is made a lien, a notice to that effect to property owners must be given and a hearing held, inasmuch as this would constitute making an assessment against real property.[10]

Perhaps the most far reaching provisions of this act are those which empower public service districts to impose front foot assessments to defray the costs of constructing sewer lateral collection lines. In the past, sewer lines have been constructed and extended by public service districts from the proceeds derived either from the imposition of assessments in the form of a district wide ad valorem tax levy or from revenues derived from the operation of the sewer system itself. In some instances a more equitable scheme would include the imposition of front foot assessments against properties in front of which the sewer laterals are to be constructed. The purpose of such assessments is to defray all or a portion of the costs of actually laying the sewer collection lines in front of the properties to be benefitted therefrom. This act provides the procedure whereby such front

10. Distin v. Bolding, 240 S.C. 545, 126 S.E.2d 649 (1962).

foot assessments can be imposed which includes the giving of written notice to each property owner affected, and the holding of a hearing in regard to any objections as to the amount of the assessment. The procedure provided for the imposition of front foot assessments and the collection thereof is substantially the same as the machinery provided in Act No. 349[11] in the case of the imposition of front foot assessments by incorporated cities and towns.

This act also provides that all monies realized from front foot assessments shall be used to defray the costs to the extent provided by the district commission of the establishment and construction of sewage lateral collection lines, or to provide debt service on bonds issued by the district to defray the costs of such construction.

Assessments have provided a traditional method of financing public improvements by a special purpose district in South Carolina for many years. In 1926 the South Carolina Supreme Court in the case of *Evans v. Beattie*,[12] upheld the right of the general assembly to create the coastal highway district and empower it to impose assessments for the benefits conferred against all taxable properties within the district in order to provide debt service on bonds issued to construct a highway through a portion of the district. The right of a special purpose district, pursuant to legislative authority, to impose assessment to defray the cost of constructing sewer facilities was upheld in *Rutledge v. Sewer District*.[13] In the *Evans* and *Rutledge* cases the assessments were actually in the form of district wide ad valorem tax levies. An assessment is sustained on the theory that it is payment by property owners for a benefit conferred upon their respective properties, and it is not essential that this benefit be measured on the basis of the assessed value of the taxable property of a particular taxpayer. In the *Distin* case the South Carolina Supreme Court upheld the power of the general assembly to provide for an assessment which was based on a sewer service charge to be imposed against properties connected to a sewage facility owned and operated by a public service district. In the act here the assessment is computed on another basis, to wit: according to the extent of the respective frontage of properties thereon by equal rate per foot of such frontage. This particular basis for

11. S.C. ACTS & J. RES. 1965, p. 614.
12. 137 S.C. 496, 135 S.E. 538 (1926).
13. 139 S.C. 188, 137 S.E. 597 (1927).

an assessment has never been expressly approved by the South Carolina Supreme Court although there are dicta in the opinions in the *Evans*, *Rutledge* and *Distin* decisions approving the imposition of assessments on the basis of front footage. Consequently, a test suit has been instituted and is presently pending in the court of common pleas in Charleston County for the purpose of having the South Carolina Supreme Court rule on the validity of the front foot assessments provided by this act.

C. Municipalities and Special Purpose Districts Authorized to Contract to Provide Sewer Facilities

Act No. 386 of 1965. Sewage collection, treatment and disposal facilities were originally conceived of as a function of an incorporated city or town. In 1943, the South Carolina Supreme Court in the case of *Doran v. Robertson*,[14] held that the construction of a sewage system was not an ordinary county purpose within the meaning of article X, section 6 of the South Carolina Constitution, and as a consequence, a county could not levy taxes or issue bonds to construct a sewer system. As a result, sewer systems have been constructed outside of the boundaries of incorporated cities and towns, in many instances, by so called special purpose districts created by the general assembly for that purpose and having the power to impose taxes and issue bonds for that purpose.[15]

In some areas separately owned public sewer systems have been constructed in close proximity to each other. Furthermore, it is apparent that in some instances a joint undertaking by municipalities and/or special purpose districts would provide the most economical and efficient sewage collection, treatment and disposal facilities for an area which lies partly within a municipality and partly within a special purpose district, or partly within each of two municipalities, or partly within each of two special purpose districts.

Until the enactment of Act No. 386[16] no statutory authorization existed by which municipalities and special purpose districts could contract to undertake a joint enterprise for establishing, operating, maintaining or extending of sewage collection, treatment and disposal facilities, or any of them. Act No. 386 expressly empowers any incorporated municipality or special purpose

14. 203 S.C. 434, 27 S.E.2d 714 (1943).
15. Rutledge v. Sewer Dist., 139 S.C. 188, 137 S.E. 597 (1927).
16. S.C. ACTS & J. RES. 1965, p. 693.

district to enter into contracts with other incorporated municipalities or special purpose districts for the construction and operation of facilities for the collection, disposal and treatment of sewage. Furthermore, the act provides that the contracting parties may enter into agreements with regard to the ownership of the facility, the apportioning the cost of operating and maintaining the same and the providing of funds with which to construct the sewage facility.

The contracting parties are empowered to raise funds for which they may be obligated under the terms of their contract to defray the costs of operation and maintenance either by an ad valorem tax levy or through the imposition of a sewer service charge; the sewer service charge may be collected either by combining it with the water bill, or by making it a lien against the property served in the event of non payment. The act also provides that any special purpose district entering into a contract pursuant thereto obligating it to issue bonds whose proceeds are to be used for the purpose of constructing or enlarging sewer facilities shall have in addition to any other authorization, the right to issue general obligation bonds to fulfill its contractural obligations under the procedure provided by the County Bond Act.[17]

D. Advance Refunding of Outstanding Bonds Authorized

Act No. 309 of 1965. The interest which a public body is required to pay on its obligations, whether general obligation bonds or bonds payable from a revenue producing facility such as a water and sewer system, is determined by the conditions existing in the money market at the time the bonds are sold. These conditions naturally fluctuate from year to year and even from month to month with the result that the interest costs likewise fluctuate. Many public entities have outstanding bonds which were sold during periods when the interest cost was high. In some instances a public entity can effect considerable savings by calling in its outstanding bonds prior to maturity and refunding them by an issue of bonds which would sell at a lower rate of interest. In a case where the outstanding bonds to be refunded cannot be prepaid for a number of years, the advantageous money market can nevertheless be taken advantage of through the immediate issuance of the refunding bonds whose proceeds

17. S.C. CODE ANN. § 14-511 to -529 (1962).

would be held for the payment of the outstanding bonds at such times as they mature or can be called for prepayment.

In 1940, the town of Hartsville had outstanding four issues of bonds two of which were redeemable at the option of the town after December 1, 1940, two of which were redeemable at the option of the town on November 1, 1941. The interest on these outstanding bonds was considerably higher than the interest rate at which the town could sell bonds in 1940. Thus, in July, of 1940, the town undertook to issue bonds to obtain funds with which to call the outstanding bonds for payment on December 1, 1940, and November 1, 1941. This action was attacked on the ground that the new issue was to be made too far in advance of the maturity of the issue then outstanding, and this amounted to money market speculation by town officials. The court held in that instance in its decision in the case of *Kalber v. Stokes*,[18] that the refunding bonds could be issued although all of the bonds to be retired therefrom would not be redeemable until seventeen months after the issuance of the refunding bonds.

In 1941 the general assembly enacted the "Refunding Act", now codified as sections 1-681 to 1-699 of the South Carolina Code. This statute provides a method by which incorporated cities or towns, school districts, counties or other political subdivisions or divisions of the state can refund outstanding general obligation bonds, whether or not such general obligation bonds are additionally secured by pledge of other revenues. This statute provides that the refunding bonds may not be issued sooner than one year from the date the outstanding bonds fall due or have been called for redemption. In the case of bonds payable from the revenues of any revenue producing project, sections 59-651 to 59-682 of the South Carolina Code provide a means by which counties, townships, cities and incorporated towns may issue refunding bonds. This statute does not have a limitation as to the time when such refunding bonds can be issued in relation to the time that the outstanding bonds can be redeemed. Consequently, it would appear to permit refunding at any time.

Against this background at its 1965 session, the general assembly enacted Act No. 309[19] in order to establish the method by which advanced refunding may be accomplished by the state and its agencies, instrumentalities, political subdivisions, and authorities in cases where the outstanding bonds cannot be re-

18. 194 S.C. 339, 9 S.E.2d 785 (1940).
19. S.C. ACTS & J. RES. 1965, p. 551.

deemed until more than six months from the issuance of the refunding bonds. The only conditions imposed upon an advanced refunding under this act are (a) that the advanced refunding take place not more than five years prior to the date on which the outstanding bonds mature or can be made subject to redemption in accordance with their tenor and terms, (b) that a saving be effected through an advanced refunding, and (c) that through the means of investing the proceeds of any refunding bonds in investments permitted by the act the effective interest rate earned thereon shall equal or exceed the interest to be paid upon the refunding bonds between the time the issuance of the refunding bonds and the redemption of the outstanding bonds.

If these conditions are met, this act permits the State of South Carolina, its agencies and institutions, counties or incorporated municipalities, school districts, special purpose districts, authorities and every other agency or political entity of the state now or hereafter given the power to incur debt in the form of general obligation bonds, with or without additional security, or bonds payable solely from any revenue producing project to utilize the provisions of either sections 1-681 to 1-699, or sections 59-651 to 59-682 of the South Carolina Code to effect a refunding of any outstanding bonds. Refunding bonds may be issued in the amount necessary to pay the outstanding bonds including the redemption premiums and to cover the costs of issuing refunding bonds. In the case of revenue bonds the refunding bonds may be issued also to include any amount necessary to meet the cost of any improvements to the revenue producing project found necessary which can be accomplished with the moneys provided by the proceeds of the refunding bonds issued for the purpose of constructing such improvements.

The act provides that the proceeds from the sale of the refunding bonds must be held in trust by a corporate trustee to be applied to the payment of the principal, interest and redemption premium of the outstanding bonds being refunded.

There would not seem to be any doubt as to the right of the general assembly to provide for refunding as done by this act in the case of revenue bonds. However, the issuance of general obligation bonds is conditioned upon compliance with various requirements of the South Carolina Constitution. In particular, such bonds must not violate any applicable debt limitation and furthermore, must be issued for a corporate purpose of the issuing body. At the present time, the Supreme Court of South

Carolina, as pointed out hereinabove, has approved the advance refunding of general obligation bonds only in the case where the time lapse was not more than seventeen months between the issuance of the refunding bonds and the redemption of the outstanding bonds. The right of the general assembly to provide for the issuance of refunding general obligation bonds up to five years before the outstanding bonds would be redeemed as permitted by the act must therefore still be tested in court. With this in mind, the act here at section 10 contains a saving clause which provides that if it be held "that the application of this act to the refunding of general obligation bonds is invalid, such holding shall not disturb the right of governing boards to effect advanced refunding with bonds payable from the revenues of any revenue producing project."

E. Constitutional Amendment Proposed Affecting Elections on Debt Limitation Amendment

Act No. 468 of 1965. Article XVI, section 1 of the South Carolina Constitution prescribes the manner in which the constitution can be amended. Included in the amendatory procedure is the submission of the amendment to the qualified electors of the state at the next general election thereafter for members of the South Carolina House of Representatives. Consequently, any amendment must be voted on throughout the state, although its effect may be limited only to a single county or a smaller political subdivision.

This has occurred frequently in the case of the numerous amendments to the debt limitation established by article X, section 5, and although the voters in the county or political subdivision to be affected approved the amendment it would not become a part of the constitution unless it passed on a state wide basis.

At its 1965 session, the general assembly enacted this joint resolution[20] proposing an amendment to section 1 of article XVI of the constitution which would apply in the case of amendments providing for a change in the bonded debt limitation of a county or any political subdivision of a county. In such a case, the proposed amendment would be voted on only by the qualified electors of the county involved rather than on a state wide basis. Of course, even though an amendment was voted favorably on

20. S.C. ACTS & J. RES. 1965, p. 827.

by the qualified electors of the county involved, it would nevertheless require subsequent ratification by the general assembly before it would become a part of the constitution.

F. State Bank Holding Company Act Passed; Penalties Set Out

Act No. 277 of 1965. Act No. 277[21] is designated as "The State Bank Holding Company Act." The act defines a bank holding company as any company which directly or indirectly owns, controls or holds with power to vote twenty-five percent or more of the voting stock of each of two or more banking institutions; or which controls the election of a majority of the directors of any two or more banking institutions; or for the benefit of whose stockholders or members twenty-five percent or more of the voting stock of each of two or more banking institutions is held by one or more trustees. The act specifically excludes any corporation in which the United States or any state is a majority stockholder, eleemosynary corporations generally, and firms owning or controlling stock acquired in connection with the underwriting of securities which is held only until a sale can be effected.

This act makes it unlawful for any action to be taken resulting in a company becoming a bank holding company, for any bank holding company to acquire control of more than five percent of the voting shares of any bank, or own or substantially own all of the assets of any bank, or to consolidate or merge with any other bank holding company, unless the consent and approval of the state board of bank control first be given.

In passing on applications the state board of bank control is to consider the financial history and condition of the companies and banks concerned, and the convenience, needs and welfare of the communities and area concerned. The board also is to consider whether or not the proposed acquisition or merger would unreasonably affect adequate and sound banking, the public interest and the preservation of competition in the field of banking.

II. Court Decisions

A. Myrtle Beach Bond Election Upheld

The Municipal Bond Act, sections 47-831 to 47-860, inclusive, of the South Carolina Code is the legislative vehicle by which incorporated cities and towns may issue general obligation bonds.

21. S.C. Acts & J. Res. 1965, p. 495.

Among the requirements to be fulfilled is the filing of a petition signed by a majority of the freeholders as shown by the municipality's tax books requesting an election upon the question of issuing the bonds. The statute requires that the petition set forth "the amount of bonds sought to be issued and the purpose or purposes for which the proceeds thereof are to be expended."[22]

Prior to August 12, 1963, there was filed with the city council of Myrtle Beach a petition signed by a majority of the freeholders of the city requesting an election for the purpose of determining whether or not the city shall be empowered to issue "general obligation bonds in the amount of $500,000 for the purpose of securing funds with which to acquire a site for and finance the erection of a municipal civic center . . . ." In acting on this petition the city council concluded that the eight percent constitutional debt limitation applicable to the city of Myrtle Beach would prohibit the issuance of the full amount of the bonds requested. As a result it submitted to the qualified electors of the city of Myrtle Beach in an election held on September 3, 1963, the question of whether or not the city of Myrtle Beach should be empowered to issue "not exceeding $500,000 of general obligation bonds of the City of Myrtle Beach, or such portion thereof as shall on the occasion or occasions of their issuance be within the constitutional debt limitation applicable to the City of Myrtle Beach. . . ."[23]

The election resulted favorably and a test suit was instituted to determine whether or not the city of Myrtle Beach could proceed on the basis of the said petition and election with the issuance of less than 500,000 dollars of general obligation bonds. The plaintiff contended that inasmuch as the petition sought the issuance of bonds in an amount greater than that permitted by the constitutional debt limitation, the city council had no power to proceed to order the election under the Municipal Bond Act or to present to the electorate the question in the fashion set forth above.

The Supreme Court of South Carolina in its decision in *Ramsey v. Cameron*[24] upheld the validity of the proposed bond issue relying on the earlier decision in the case of *Watson v. Livingston*.[25] The court concluded that the petition, in requesting the

22. S.C. CODE ANN. § 47-835 (1962).
23. Ramsey v. Cameron, 245 S.C. 189, 192, 139 S.E.2d 765, 767 (1965).
24. 245 S.C. 189, 139 S.E.2d 765 (1965).
25. 154 S.C. 257, 151 S.E. 469 (1930).

issuance of 500,000 dollars of general obligation bonds, actually sought the issuance of bonds in any amount up to 500,000 dollars, and that the city council properly submitted the question at the special election in the manner set out above.

The petition in question also contained the following language: "I understand these bonds will be retired by levying an additional 5 mill tax on real property in Myrtle Beach."[26] The Municipal Bond Act, however, provides only for the issuance of general obligation bonds payable from an ad valorem tax levy without limit on all taxable property within the municipality, and the court consequently held this additional language to be mere surplusage. The opinion noted that any other decision would make the petition a nullity. The court assumed that "it was intended that the petition comply with the provisions of the Constitution and the Municipal Bond Act."[27]

A strong dissent was filed. The dissenting opinion points out that the Municipal Bond Act, in section 47-837, provides that the municipal council shall order an election if it finds as a prerequisite thereto three things with respect to the freeholders' petition, one of which is "that it seeks the issuance of bonds in an amount not prohibited by any constitutional limitation. . . ."[28]

Inasmuch as the petition here sought the issuance of bonds "in the exact amount of $500,000, which amount City Council found to be prohibited by the constitutional limitation of 8% . . .,"[29] the dissenting opinion concludes that the city council was consequently without any authority under the Municipal Bond Act to order the election.

The dissenting opinion also raises the question of whether or not the necessary signatures of freeholders could have been obtained if the petition had been unambiguous with regard to the amount of bonds to be issued and the fashion in which they would be retired.

B. Sidewalk Assumed to Be Reasonably Safe

The right of a person to recover for injuries or damages to his personal property through a defect in any street under the control and within the limits of any city or town is conditioned

26. Ramsey v. Cameron, 295 S.C. 189, 192, 139 S.E.2d 765, 766 (1965).
27. *Id.* at 197, 139 S.E.2d at 769.
28. *Id.* at 199, 139 S.E.2d at 770 (Bussey, J., dissenting).
29. *Ibid.*

upon lack of negligence on the part of such person in bringing about the injury or contributing thereto.[30] In the case of *Kelly v. City of Aiken*,[31] the plaintiff brought a suit for injuries allegedly sustained as a result of tripping on a depression in a sidewalk in the city of Aiken.

This opinion supports the proposition that a pedestrian is entitled to assume that a sidewalk is in reasonably safe condition for such use. However, the opinion makes it clear that this assumption does not relieve a pedestrian from his duty to exercise due care, and the question of whether or not such due care was exercised must be determined from the facts of each case.

30. S.C. CODE ANN. § 47-70 (1962).
31. 245 S.C. 503, 141 S.E.2d 651 (1965).